

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Document #

10

U.S.C.A. #

U.S.D.C. #

JUDGE:

DATE:

*Senores*

-v-

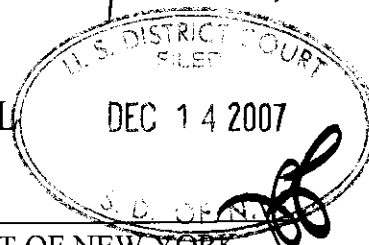
*Fischer*

*How-4577*

*KMW*

*Dec. 14, 2007*

INDEX TO THE RECORD ON APPEAL



PREPARED BY (NAME): THOMAS R. PISARCZYK  
FIRM: U.S. DISTRICT COURT - SOUTHERN DISTRICT OF NEW YORK  
ADDRESS: 500 PEARL STREET, ROOM 370  
NEW YORK, NEW YORK 10007  
PHONE NO.: (212) 805 - 0636

DISTRICT COURT DOCKET ENTRIES

DOCUMENT DESCRIPTION

DOC. #

CLERK'S CERTIFICATE

SEE ATTACHED LIST OF NUMBERED DOCUMENTS

**\*\* ONLY CIRCLED DOCUMENTS ARE INCLUDED \*\***

**\*\* ALL OTHERS MISSING AT THIS TIME \*\***

☒ Original Record

☐ Supplemental Record

The record in the above entitled case was indexed to the U.S.C.A.  
for the Second Circuit on the 14th Day of December, 2007.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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*Seniores*  
 -v-  
*Fischer*  
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U.S.C.A. # \_\_\_\_\_  
 U.S.D.C. # 07cv4577  
 JUDGE: KMW  
 DATE: Dec. 14, 2007

**Clerk's Certificate**

I, J. Michael McMahon, Clerk of the Court of the United States District Court for the Southern District of New York, do hereby certify that the certified copy of the docket entries and the original filed papers numbered \_\_\_\_\_ Through \_\_\_\_\_, inclusive, constitutes the Original record on appeal in the above entitled proceedings except for the following missing documents:

Date Filed

Document Description

_____	_____
_____	_____
_____	_____
_____	<b><u>BALANCE OF FILE MISSING AT THIS TIME</u></b>
_____	_____
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In Testimony Whereof, I have caused the seal of said Court to be hereunto affixed, at the City of New York, this 14th Day of December In this year of our Lord, Two Thousand and Seven, and the Independence of the United States this 232<sup>ND</sup> year.

**J. Michael McMahon, Clerk**

By \_\_\_\_\_

*[Signature]*  
 Deputy Clerk

APPEAL, CLOSED, HABEAS

**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CIVIL DOCKET FOR CASE #: 1:07-cv-04577-KMW**  
**Internal Use Only**

Linares v. Fischer  
Assigned to: Judge Kimba M. Wood  
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 05/31/2007  
Date Terminated: 09/27/2007  
Jury Demand: None  
Nature of Suit: 530 Habeas Corpus (General)  
Jurisdiction: Federal Question

Date Filed	#	Docket Text
05/31/2007	<u>1</u>	DECLARATION IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS. Document filed by Jorge Linares.(mbe) (Entered: 06/05/2007)
05/31/2007	<u>2</u>	PETITION FOR WRIT OF HABEAS CORPUS pursuant to 28 U.S.C. 2254..Document filed by Jorge Linares.(mbe) (Entered: 06/05/2007)
05/31/2007		Magistrate Judge Debra C. Freeman is so designated. (mbe) (Entered: 06/05/2007)
05/31/2007	<u>3</u>	Petitioner is granted leave to proceed inform a pauperis. Because it is unclear whether petitioner has exhausted his state court remedies, however, petitioner is directed to submit an amended petition within sixty (60) days of the instant order detailed below. Petitioner is hereby directed to file an amended petition to state what steps he has taken to exhaust in state court the grounds he seeks to raise here. Should petitioner decide to file an amended petition, it must be submitted to this Court's Pro Se office within sixty (60) days of the date of this order, be captioned as an "Amended Petition" and bear the same docket number as this order. Petitioner is advised that his amended petition will completely replace the petition he filed originally in Court. A copy of this order must be attached to the amended petition. All further proceedings shall stayed for sixty (60) days or until petitioner has complied with this order. If petitioner fails to comply with this order within the time allowed, the petition will be dismissed. Once submitted, the amended petition shall be reviewed for compliance with this order and substantive sufficiency and then, if proper, the case shall be reassigned to a district judge in accordance with the procedures of the Clerk's office. (Signed by Judge Kimba M. Wood on 5/31/2007) (mbe) (Entered: 06/05/2007)
07/27/2007	<u>4</u>	AMENDED PETITION amending <u>2</u> Petition for Writ of Habeas Corpus against Brian Fischer. Document filed by Jorge Linares. Related document: <u>2</u> Petition for Writ of Habeas Corpus filed by Jorge Linares.(jar) (Entered: 07/31/2007)
09/27/2007	<u>5</u>	JUDGMENT in favor of defendants as against plaintiff, that the complaint is dismissed and any appeal would not be taken in good faith. (Signed by Judge Kimba M. Wood on 9/27/07) (jf) (Entered: 09/28/2007)
10/31/2007	<u>6</u>	MOTION to Set Aside Default. MOTION to Vacate <u>5</u> Judgment. Attached is Affirmation in Support of Motion. Document filed by Jorge Linares.(dj) (Entered: 11/05/2007)
12/06/2007	<u>7</u>	AMENDED JUDGMENT amending <u>5</u> Judgment, that the complaint is dismissed; a certificate of appealability will not issue; any appeal would not be taken in good faith. (Signed by Judge Kimba M. Wood on 12/6/07) (ml) (Entered: 12/06/2007)
12/06/2007	<u>8</u>	ORDER granting <u>6</u> Motion to Set Aside Default; dismissing <u>6</u> Motion to Vacate. Accordingly, petitioner's motion brought pursuant to Fed. R. Civ. Pro 60(b) is granted and the judgement is vacated, however, petitioner's 2254 petition is dismissed. As the petition makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. The court certifies pursuant to 28 U.S.C. 1915(a)(3) that any appeal from this order would not be taken in good faith. SO ORDERED. (Signed by Judge Kimba M. Wood on 12/6/2007) (mbe) (Entered: 12/13/2007)
12/06/2007	<u>9</u>	NOTICE OF APPEAL from <u>7</u> Amended Judgment. Document filed by Jorge Linares. Copies mailed to attorney(s) of record: Attorney General, NYS. (tp) (Entered: 12/14/2007)
12/06/2007		Appeal Remark as to <u>9</u> Notice of Appeal filed by Jorge Linares. \$455.00 APPEAL FEE DUE. IFP REVOKED 9/27/07. COA DENIED 12/6/07. (tp) (Entered: 12/14/2007)
12/14/2007		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>9</u> Notice of Appeal. (tp) (Entered: 12/14/2007)
12/14/2007		Transmission of Notice of Appeal to the District Judge re: <u>9</u> Notice of Appeal. (tp) (Entered: 12/14/2007)